

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CV NO. 2:05cv313-T
	)	WO
PATRICK C. HOWARD	)	

**ORDER**

On April 18, 2005, this court entered an order in accordance with *Castro v. United States*, 540 U.S. 375, 124 S.Ct. 786 (2003), advising movant Patrick C. Howard of its intention to re-characterize his April 4, 2005, motion (Doc. 1) as a *motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255*.<sup>1</sup> The court cautioned Howard that such re-characterization would render his motion and any subsequent § 2255 motion susceptible to the procedural limitations imposed upon § 2255 motions, specifically the one-year period of limitation and the successive-petition bar applicable to post-conviction motions. *See Order of April 18, 2005* (Doc. 2). In addition, as required by *Castro*, the court ordered that on or before May 2, 2005, Howard should advise the court whether he seeks to:

1. Proceed before the court on the claims presented in his April 4, 2005, motion;
2. Amend his motion to assert any additional claims on which he wishes to challenge the convictions and sentence imposed upon him by this court; or
3. Dismiss his motion.

*Id.* The court also advised Howard that if he failed to file a response in compliance with its

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<sup>1</sup>Howard styled his pleading as a “*Motion to Vacate Conviction and/or Amend Sentence*.”

order, the cause would proceed as an action under 28 U.S.C. § 2255 and the court would consider only those claims presented in the motion filed on April 4, 2005. *Id.*

On May 2, 2005, Howard filed a pleading with this court styled as “*Petitioner’s Objection to Order*” (Doc. 3), wherein he objects to re-characterization of his April 4, 2005, motion as a motion under 28 U.S.C. § 2255 and moves that this court “receive his motion to vacate conviction and/or amend sentence as a civil suit brought pursuant to Fed.R.C.P. 60(b), and ... give him any and all further relief as this Court deems just and proper.” *Id.* at 3. This pleading fails to comply with the court’s order of April 18, 2005, as Howard fails to respond to the choices provided to him in the court’s order. Accordingly, it is

**ORDERED** that on or before May 16, 2005, Howard shall file with this court a response in compliance with the directives of this court’s order of April 18, 2005. **Howard is once again CAUTIONED** that should he fail to file a response in compliance with the court’s order, this cause will proceed as an action under 28 U.S.C. § 2255 and the court will consider only those claims presented in his motion filed on April 4, 2005.

Done this 5<sup>th</sup> day of May, 2005.

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/s/Charles S. Coody  
CHARLES S. COODY  
CHIEF UNITED STATES MAGISTRATE JUDGE